

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 410 of 1997  
in  
CIVIL APPLICATION No 3725 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.THAKKER  
and  
MR.JUSTICE S.D.PANDIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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LALLUBHAI K RATHOD

Versus

BOTAD NAGARPALIKA

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Appearance:

MR SV PARMAR for Petitioner  
SERVED BY DS for Respondent No. 1  
MR YN RAVANI for Respondent No. 3  
M/S THAKKAR ASSOC. for Respondent No. 5

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CORAM : MR.JUSTICE C.K.THAKKER and

MR.JUSTICE S.D.PANDIT

Date of decision: 18/06/97

ORAL JUDGEMENT {Per : Pandit, J.}

Lallubhai Khimjibhai Rathod, original petitioner in Special Civil Application No. 1348 of 1997 has preferred the present appeal against the order passed in Civil Application No. 3725 of 1997 in Special Civil Application No. 1348 of 1997 on 3rd April, 1997 by which his claim for interim relief has been rejected.

2. It is the case of petitioner that he is working as an Octroi Clerk. That he belongs to Scheduled Caste and is quite senior in service to Respondent No. 3 Batukrai Manilal Maniar and he is entitled to get the post of the Octroi Inspector but the Respondent No. 2 manipulated to pass a Resolution to appoint Respondent No. 3 in the said post with a view to deny him the said post. He has therefore come before the Court for quashing and setting aside the resolution Annexure "F" and the subsequent order at Annexure "H", by which the respondent No. 3 is appointed as an Octroi Inspector, and by way of interim relief, he was seeking suspension of the operation of both the resolutions at Annexure "F" and "H" respectively.

3. The learned Single Judge after hearing the parties was pleased to reject the claim for interim relief by passing the single word order "Rejected", and hence, the original petitioner has come before this Court by preferring this Letters Patent Appeal.

4. It is the contention of the respondent No. 3; as made before us by the learned advocate for the respondent No. 3 as well as by the learned advocate for Respondent No. 1 that the present petitioner does not possess necessary qualification for holding the said post. According to both of them, the qualification for holding the said post is passing of Matriculation - S.S.C Examination and the petitioner is non-matriculate. It is their further contention that the respondent No. 3 is having a better qualification as he has passed XII Std. and F.Y.B.Com than the present petitioner, and therefore, the respondent No. 3 was appointed as an Octroi Inspector, in view of the order obtained by the respondent No. 3 from a Civil Court, by which the action of the Collector for quashing the resolution in favour of the respondent No. 3 has been stayed as per the order passed in Civil Suit No. 82 of 1993. As against this, it is contended by Mr. Parmar, the learned advocate for the appellant that there are no rules framed by the said Respondent No. 1 - Municipality for fixing the qualification for appointment of the Octroi Inspector and no rules are also framed by the Respondent No. 1

Municipality for giving promotion to the Octroi clerks to the post of Octroi Inspector. This controversy between them could be decided only at the time of final hearing of the main petition.

5. Admittedly, the resolution in question, is passed by the Respondent No. 1 - Municipality and the order appointing Respondent No. 3 as an Octroi Inspector were already in force before filing of the present petition, by the present appellant. It is very pertinent to note that as per the prayers made by the present petitioners, in the main petition, the petitioner is seeking for his consideration for the promotion to the higher post. Therefore, in the circumstances, to grant the interim relief in favour of the petitioner would amount to finally deciding the petition in favour of the appellant. It is very pertinent to note that it is not the case of the petitioner that by continuation of the order at Annexure "H" till the final disposal of this petition, the petitioner is likely to suffer irreparable loss. If the prayer which the petitioner has made for the purpose of getting interim relief is considered then it would be quite clear that if the said prayer is granted, then the post of Octroi Inspector will remain vacant. By keeping the said post vacant, it could not be said that there would be prevention of any irreparable injury to the present petitioner. In other words, it can be said that the petitioner would suffer any irreparable injury which could not be adequately compensated by passing appropriate order. If the petitioner ultimately happened to succeed in this petition then he would be entitled to occupy the said post since the date respondent No. 3 has occupied and he will get all the benefits; including backwages. As against this, if the interim relief as sought by the petitioner is granted and if ultimately the petition happen to be dismissed then the Respondent No. 3 is likely to suffer irreparable injury and loss. The respondent No. 1 will also suffer by keeping the post vacant. Therefore, the balance of convenience also does not lie in favour of the petitioner-appellant. We are not expressing any view as regard the averments and contentions raised by the petitioner and respondent No. 3 regarding the holding of the said post but taking into considering that the respondent No. 3 was already working in that post by holding charge since July, 1995 vide Annexure "E" and that he is appointed before the petitioner came before this Court and petitioner is only seeking his consideration for the appointment to the said post, the balance of convenience will lie in refusing to pass the mandatory ad-interim injunction sought by the petitioner-appellant in the Special Civil Application.

Therefore, in the circumstances, we are of the view that it is not necessary to interfere with the discretionary order passed by the learned Single Judge in refusing to grant mandatory interim relief.

6. Mr. Parmar had also urged before us that appointment of Respondent No. 3 was malafide. According to him, the term of the office of Municipality was to come to an end on 31st January, 1997 and the order in question is passed on 31st January, 1997. According to him the resolution of 24th January, 1997 is also fishy. We refrain from expressing any opinion with regard to the said contention as the same is likely to cause prejudice to both the sides at the time of final hearing of the matter. It would be open to the parties to raise such a contention at the time of final hearing of the petition, which has been admitted and notice was kept returnable. His further contention was that the petitioner belong to Scheduled Caste and as per the relevant Reservation Policy, there was only one such post of Octroi Inspector. According to him, the said post and other equivalent posts will have to be clubbed together and reservation policy will have to be implemented. But, this contention will have to be placed for consideration at the time of final hearing of the petition, on merits as the pleading of parties are incomplete. We are at this stage not expressing any opinion regarding the correctness or otherwise of the said contention.

7. Mr. Parmar has also contended that the President of the Respondent No. 1 Municipality is not a competent authority to make appointment in view of provisions of sub-section 3 of Section 50 of the Gujarat Municipalities Act. The annexure "H" is a communication made by the president after the passing of the resolution by the Municipal Council on 24th January, 1997. Though, *prima facie*, the said contention could not be accepted. Had there been not the resolution of the Municipal Council of appointing the Respondent No. 3 before issuing of Annexure "H", the said contention of Mr. Parmar could have been accepted. But, any way, we are not finally expressing the opinion regarding the said contention. It would be open to raise that contention at the time of final hearing.

8. He has also contended that the Civil Judge (SD), Bhavnagar had no jurisdiction to restrain the Collector from exercising his statutory duty by issuing ad-interim injunction against the Collector. But it is not clear from that as to what material was produced before the Civil Judge (SD), Bhavnagar and in what circumstances he

has passed that order. But any way, that contention could not be decided at this stage. It would be open for the appellant to raise that contention at the time of final hearing. In our opinion, the said contention has no much bearing in considering the appellant's claim for interim relief.

9. Thus, in our opinion, the appellant-petitioner has failed to show that he would suffer irreparable loss or injury which could not be adequately compensated in money as well as the balance of convenience is lying in his favour, and therefore, we are of the view that he is not entitled to get the interim relief. His claim has been rightly rejected. We, therefore, dismiss this appeal with no order as to costs.

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Prakash\*